



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R06-RCRA-2017-0254; FRL-9968-61-Region 6]

Hazardous Waste Management System;

Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition submitted by Samsung Austin Semiconductor (Samsung) to exclude from hazardous waste control (or delist) a certain solid waste. This final rule responds to the petition submitted by Samsung to have the copper filter cake from the electroplating process excluded, or delisted from the definition of a hazardous waste. The Copper filter cake is listed as F006, wastewater treatment sludges from electroplating operations. The basis of the listing is cadmium, hexavalent chromium, nickel, and cyanide (complexed). After careful analysis and evaluation of comments submitted by the public, the EPA has concluded that the petitioned wastes are not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies to the copper filter cake generated at Samsung Austin Semiconductor's Austin, Texas facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills, but imposes testing conditions to

ensure that the future-generated wastes remain qualified for delisting.

DATES: This final rule is effective on **[insert date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-RCRA-2017-0254. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For technical information regarding the Samsung Austin Semiconductor petition, contact Michelle Peace at 214-665-7430 or by email at peace.michelle@epa.gov.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

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I. Overview Information

- A. *What action is EPA finalizing?*

The EPA is finalizing:

- (1) The decision to grant Samsung Austin Semiconductor’s petition to have its

copper filter cake excluded, or delisted, from the definition of a hazardous waste, subject to certain continued verification and monitoring conditions; and

- (2) To use the Delisting Risk Assessment Software v.3.0.35 to evaluate the potential impact of the petitioned waste on human health and the environment.

The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

After evaluating the petition, EPA proposed a rule, on July 14, 2017, to exclude the Samsung Austin Semiconductor copper filter cake waste from the lists of hazardous wastes under §§261.31 and 261.32. There were no comments received on this rulemaking.

B. Why is EPA approving this delisting?

Samsung's petition requests an exclusion from the F006 waste listing pursuant to 40 CFR 260.20 and 260.22. Samsung does not believe that the petitioned waste meets the criteria for which EPA listed it. Samsung also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)-(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (3). Based on this review,

EPA agrees with the petitioner that the waste is non-hazardous, with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from Samsung is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Austin, Texas facility.

C. What are the limits of this exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261, appendix IX and the conditions contained herein are satisfied. The conditional exclusion applies to 750 cubic yards of copper filter cake sludge generated annually from the Samsung Austin Semiconductor facility in Austin, TX.

D. How will Samsung Austin Semiconductor manage the waste if it is delisted?

Storage containers of the copper filter cake will be transported to an authorized, solid waste landfill (e.g. RCRA Subtitle D landfill, commercial/industrial solid waste landfill, etc.) for disposal. Any plans for recycling must be addressed through the Hazardous Waste Recycling regulations.

E. When is the final delisting exclusion effective?

This rule is effective **[insert date of publication in the Federal Register]**. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How does this final rule affect states?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Samsung Austin Semiconductor transports the petitioned waste to or manages the waste in any State with delisting authorization, Samsung Austin Semiconductor must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What is a delisting?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator does

not consider hazardous under RCRA.

B. What regulations allow facilities to delist a waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§261.31 and 261.32. Specifically, §260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

C. What information must the generator supply?

Petitioners must provide sufficient information to EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Data

A. What waste and how much did Samsung Austin Semiconductor petition EPA to delist?

In November 2015, Samsung petitioned EPA to exclude from the lists of hazardous wastes contained in §§ 261.31 and 261.32, filter cake (F006) generated from its facility located in Austin, Texas. The waste falls under the classification of listed waste pursuant to §§ 261.31 and 261.32. Specifically, in its petition, Samsung requested that EPA grant a conditional exclusion for 750 cubic yards of F006 filter cake.

The 40 CFR part 261 appendix VII hazardous constituents which are the basis for listing can be found in Table 1.

Table 1

EPA Waste Codes for Copper Filter Cake and the Basis for Listing

Waste Code	Basis for Listing
F006	Cadmium, hexavalent chromium, nickel, cyanide (complexed).

B. How did Samsung Austin Semiconductor sample and analyze the waste data in this petition?

To support its petition, Samsung Austin Semiconductor submitted:

- 1) Historical information on waste generation and management practices; and
- 2) Analytical results from eight samples for total and TCLP concentrations of compounds of concern (COC)s;

TABLE 2
Analytical Results / Maximum Allowable Delisting Concentration
Copper Filter Cake
Samsung Austin Semiconductor, Austin, Texas

Constituent	Maximum Total Concentration (mg/kg)	Maximum TCLP Concentration (mg/L)	Maximum TCLP Delisting Level (mg/L)
Acetone	0.0013	0.24	2070.0
Arsenic	3.6	0.098	1.66
Barium	5.30	0.13	100.0
Cadmium	0.75	0.004	0.362
Carbon disulfide	2.7	0.043	224.75
Chromium	42	0.12	5.0
Chromium(VI) (+6)	1.7	0.072	5.0
Cobalt	1.6	0.035	1.36
Copper	14600	5.4	97.1
Lead	6.3	0.11	2.45
Nickel	25.7	0.078	53.8
Selenium	1.4	0.072	1.0
Silver	0.95	0.0012	5.0
Thallium	1.7	ND	0.1458
Tin	7.6	ND	22.5
Toluene	2.5	ND	60.1
Vanadium	25.8	0.014	14.36
Zinc	43.0	0.21	797

Notes: These levels represent the highest constituent concentration found in any one sample and does not necessarily represent the specific level found in one sample.

IV. Public Comments Received on the Proposed Exclusion

Who submitted comments on the proposed rule?

The EPA received no public comments on the July 14, 2017, proposed rule.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735,

October 4, 1993), this rule is not of general applicability and therefore, is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, “Federalism”, (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this rule does not have tribal implications, as specified in Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant

as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used DRAS, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, “Civil Justice Reform”, (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not

required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The Agency's risk assessment did not identify risks from management of this material in an authorized, solid waste landfill (e.g. RCRA Subtitle D landfill, commercial/industrial solid waste landfill, etc.). Therefore, EPA believes that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: September 19, 2017.

Wren Stenger, Director,
Multimedia Division,
Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261--IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

2. In table 1 of appendix IX to part 261 add the entry “Samsung” in alphabetical order to read as follows:

Appendix IX to Part 261--Wastes Excluded Under §§260.20 And 260.22

Table 1--Wastes Excluded From Non-Specific Sources

Facility	Address	Waste Description
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Samsung	Austin, TX	<p>Copper Filter Cake (EPA Hazardous Waste Numbers F006) generated at a maximum rate of 750 cubic yards annually.</p> <p>For the exclusion to be valid, Samsung must implement a verification testing program for each of the waste streams that meets the following Paragraphs:</p> <p>(1) Delisting Levels:</p> <p>All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph.</p> <p>Copper Filter Cake. Leachable Concentrations (mg/l): Acetone – 2070.0; Arsenic – 1.66; Barium- 100.0; Cadmium-0.362; Carbon Disulfide- 224.75; Chromium- 5.0; Chromium (VI)- 5.0; Cobalt- 1.36; Copper – 97.1; Lead- 2.45; Nickel-53.8; Selenium -1.0; Silver-5.0; Thallium – 0.01458; Tin – 22.5; Toluene- 60.1; Vanadium-14.36; Zinc-797</p> <p>(2) Waste Holding and Handling:</p>

		<p>(A) Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) for the Copper Filter cake is verified.</p> <p>(B) If constituent levels in any sample and retest sample taken by Samsung exceed any of the delisting levels set in paragraph (1) for the Copper Filter cake, Samsung must do the following:</p> <ul style="list-style-type: none"> (i) notify EPA in accordance with paragraph (5) and (ii) manage and dispose the Copper Filter cake as hazardous waste generated under Subtitle C of RCRA. <p>(3) Testing Requirements:</p> <p>Samsung must perform analytical testing by sampling and analyzing the Copper Filter cake as follows:</p> <ul style="list-style-type: none"> (i) Collect a representative sample of the Copper Filter cake for analysis of all constituents listed in paragraph (1) prior to disposal. (ii) The samples for the annual testing shall be a representative sample, according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A,
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		<p>of the following certification statement, to attest to the truth and accuracy of the data submitted:</p> <p>“Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.</p> <p>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.</p> <p>If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.”</p> <p>(5) Reopener:</p> <p>(A) If any time after disposal of the delisted waste Samsung possesses or is otherwise made aware of any environmental data (including but not limited to underflow</p>
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		<p>water data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(B) If either the verification testing (and retest, if applicable) of the waste does not meet the delisting requirements in paragraph 1, Samsung must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(C) If Samsung fails to submit the information described in paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.</p> <p>(D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA</p>
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		<p>action is not necessary. The facility shall have 10 days from receipt of the Division Director's notice to present such information.</p> <p>(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.</p> <p>(6) Notification Requirements:</p> <p>Samsung must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.</p> <p>(A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.</p> <p>(B) For onsite disposal, a notice should be submitted to the State to notify the State that disposal of the delisted materials has begun.</p> <p>(C) Update one-time written notification, if it ships the delisted waste into a different disposal facility.</p>
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		(D) Failure to provide this notification will result in a violation of the delisting exclusion and a possible revocation of the decision.
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